

FTR Now

Changing Workplaces Review – Final Report Issued

Date: May 23, 2017

Earlier today, the government issued the long-awaited [final](#) report from the Changing Workplaces Review, entitled *An Agenda for Workplace Rights* (Final Report), which was prepared by the government-appointed Special Advisors Mr. Justice John Murray and Mr. Michael Mitchell.

The Special Advisors were mandated to consider the changing nature of the workplace, the causes behind those changes, and whether the *Labour Relations Act, 1995* (LRA) and the *Employment Standards Act, 2000* (ESA) need to be amended to meet challenges created by the changes. After conducting consultations, public hearings and reviewing a range of studies and academic papers, the Special Advisors [released an Interim Report in July of 2016](#). They then considered further submissions and feedback before finalizing their recommendations.

The Final Report is a wide-reaching document, 420 pages in length, outlining specific recommendations of the Special Advisors. While focused in particular on vulnerable workers engaged in precarious employment, the Final Report outlines changes to the legislative framework, administration of programs, compliance and enforcement, and litigation of complaints and claims.

The Special Advisors have made a number of general recommendations, including the consolidation of the ESA, LRA and *Occupational Health and Safety Act* (OHSA) under a single *Workplace Rights Act* (WRA), and the creation of a program for employee and employer education with respect to their workplace rights and obligations. Other general recommendations include the creation of a Workplace Forum to bring together senior representatives of government, business, organized labour and employee advocates on a regular basis, and a continuous independent review of the legislation every five to seven years.

The Final Report also includes a large number of recommendations related to the ESA, its standards and its enforcement, and to the LRA and collective bargaining rights.

With respect to employment standards, the Final Report recommends, among other things:

- a prohibition on differential pay for part-time, casual, temporary, contract and seasonal employees, unless there are objective grounds such as seniority, merit or other objective factors that justify a difference in pay
- reforms to personal emergency leave, including elimination of the 50-employee threshold, the creation of a standalone bereavement leave entitlement and the establishment of an

- annual seven-day entitlement
- elimination of the requirement for government approval of excess hours between 48 and 60 in a week
- inclusion of “dependent contractors” in the ESA definition of “employee”
- a new “salaries plus duties” test for the managerial/supervisory exemption
- increased vacation entitlement to three weeks after five years of employment

With respect to collective bargaining rights, recommendations include:

- preservation of the secret ballot vote system, subject to reforms regarding remedial certification (where the “true wishes of the employees” are not likely to be ascertained)
- new rules for first contract negotiations, including an intensive mediation process and access to first contract arbitration where remedial certification is ordered
- a requirement to disclose employee contact information where the union has support of approximately 20% of the employees in a bargaining unit
- broader-based bargaining for franchisees of the same franchisor
- new joint and related employer deeming provisions with respect to temporary help agency workers who perform work for clients of an agency

Next Steps

We are in the process of reviewing the Final Report in detail, and will be providing further updates and discussion of specific recommendations with respect to recommended changes to the ESA and the LRA in the coming days. In the meantime, should you have any questions related to the Final Report, please contact your [regular Hicks Morley lawyer](#).

The article in this Client Update provides general information and should not be relied on as legal advice or opinion. This publication is copyrighted by Hicks Morley Hamilton Stewart Storie LLP and may not be photocopied or reproduced in any form, in whole or in part, without the express permission of Hicks Morley Hamilton Stewart Storie LLP. ©